

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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JUANITA E. SUGUITAN, et al.,

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Plaintiffs,

No. C 07-05113 JSW

10

v.

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SAN FRANCISCO CULINARY
BARTENDERS AND SERVICE
EMPLOYEES PENSION FUND,**ORDER SETTING BRIEFING
SCHEDULE RE MOTION FOR
SUMMARY JUDGMENT**

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Defendant.

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Defendant San Francisco Culinary Bartenders and Service Employees Pension Fund ("Defendant") has now filed a proper motion for summary judgment and set the hearing date for **November 14, 2008 at 9:00 a.m.**

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The Court ORDERS that an opposition to the motion shall be filed by no later than **October 17, 2008** and a reply brief shall be filed by no later than **October 24, 2008**. Failure to oppose the motion may result in **dismissal** of this action.

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Again, Plaintiffs should be aware that failure to oppose a proper motion for summary judgment may result in the dismissal of this case with prejudice. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end Plaintiff's case. *See Rand v. Rowland* 154 F.3d 952, 953-54 (9th Cir.1998) (en banc). A principal purpose of the summary judgment procedure is to identify and dispose of factually supported claims. *See Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986). In order to withstand a motion for summary judgment, the opposing party must set forth specific facts showing that there is a genuine issue of material fact in dispute. Fed. R. Civ. P. 56(e). A dispute about a material fact

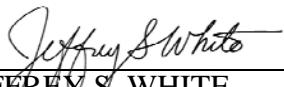
United States District Court

For the Northern District of California

1 is genuine “if the evidence is such that a reasonable jury could return a verdict for the
2 nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In the absence
3 of such facts, “the moving party is entitled to a judgment as a matter of law.” *Celotex Corp.*,
4 477 at 323. In opposing summary judgment, Plaintiffs are not entitled to rely on the allegations
5 of their complaint. *See Fed. R. Civ. P. 56(e); cf. S. A. Empresa de Viacao Aerea Rio Grandense*
6 (*Varig Airlines*) *v. Walter Kidde & Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982) (stating that “a
7 party cannot manufacture a genuine issue of material fact merely by making assertions in its
8 legal memoranda”). Rather, Plaintiffs’ response must set forth specific facts supported by
9 admissible evidence, i.e., affidavits or certified deposition testimony, showing that there is a
10 genuine issue for trial. *See id.; see also Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996)
11 (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995), and stating that it is
12 not a district court’s task to “scour the record in search of a genuine issue of triable fact”). If
13 summary judgment is granted, Plaintiffs’ case will be dismissed and there will be no trial. *See*
14 *Rand v. Rowland* 154 F.3d at 953-54.

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16 **IT IS SO ORDERED.**

17 Dated: September 24, 2008

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JUANITA E. SUGUITAN et al.

Case Number: CV07-05113 JSW

Plaintiff,

CERTIFICATE OF SERVICE

v.
**SAN FRANCISCO CULINARY
BARTENDERS AND SERVICE
EMPLOYEES PENSION FUND et al.**

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John E. Sugitan
2509 La Union
Gonzales, Tubao
Phillipines, 601

Juanita Suguitan
2509 La Union
Gonzales, Tubao
Phillipines, 601

Dated: September 24, 2008

Jennifer Ottolini

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk